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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

CASCADE NATURAL GAS CORPORATION, *Appellant*, v. EL PASO NATURAL GAS COMPANY, *et al.*, *Appellees.*	No. 79

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

STATEMENT SUPPLEMENTING JURISDICTIONAL STATEMENT OF CASCADE NATURAL GAS CORPORATION

DIVESTITURE DECREE BELOW

Appellant filed its Jurisdictional Statement herein last April, at which time the District Court had not yet entered a decree of divestiture. On June 24, 1965, the District Court entered a decree of divestiture adopting without change the objectionable provisions of Appellee El Paso Natural Gas Company's ("El Paso") proposal to the District Court pertaining to allocation of various assets of El Paso between El Paso and the new company to be organized pursuant to the divestiture decree ("New Company"). The decree was entered in the form set forth in the Appendix to El Paso's Statement Supplementing Motions of El Paso Natural Gas Company to Dismiss or Affirm filed herein. The entry of that decree presents a question in this appeal beyond the questions heretofore set forth in Appellant's Jurisdictional Statement.

ADDITIONAL QUESTION PRESENTED

Does the divestiture decree and order entered June 24, 1965, by the United States District Court, District of Utah, Central Division, comply with the mandate of the Supreme Court in *United States of America v. El Paso Natural Gas Company*, 376 U.S. 651 (1964)?

JURISDICTION

The Supreme Court has plenary power to review the decree of the District Court where the decree was entered under the Supreme Court's mandate and the Supreme Court may consider on its own motion whether its mandate has been complied with. *Continental Insurance Company v. United States*, 259 U.S. 156 (1921); *United States v. DuPont de Nemours & Company*, 366 U.S. 316, 325 (1961); *United States v. United States Gypsum Co.*, 340 U.S. 76, 89 (1950). Appellant respectfully states to this Court that it has become appropriate and urgently necessary for it to exercise its plenary power forthwith, to review and correct the decree of divestiture of the District Court. This is an instance "where things have manifestly gone awry." *United States v. Loew's, Inc.*, 371 U.S. 38, 56 (1962).

THE ADDITIONAL QUESTION IS SUBSTANTIAL

The decree of divestiture of the District Court fails to comply with the mandate of this Court in that it fails to deprive El Paso of substantial benefits El Paso has derived from violating the Clayton Act. One of the main objectives of divestiture is to deprive an anti-trust defendant of the benefits of violating the law. *United States v. DuPont de Nemours & Company*, 366 U.S. 316, 367 (1961).

It follows that if a divestiture decree does not substantially accomplish this, it is not a proper decree and true divestiture is not achieved. The record herein shows that under the decree of divestiture entered by the District Court, El Paso retains substantial benefits derived from its violation of the Clayton Act. It retains gas reserves in the San Juan Basin acquired free of competition from Pacific Northwest Pipeline Corporation during the period of illegal combination. See Federal Power Commission Merger Proceedings, Dockets G-13018 and G-13019, November 30, 1959. And since, as constituted by the decree, New Company lacks sufficient gas reserves to be a serious competitor to El Paso in California, El Paso probably retains the California markets free of New Company competition.

The harmful effects upon Appellant of the foregoing deficiencies in what was then the El Paso proposal and has now become the decree of divestiture of the District Court were analyzed at length and may be read in the transcript on appeal herein in Appellant's Memorandum of Evidence, Law and Argument in Support of Application for Leave to Intervene, filed in the District Court, at pages 17 through 22 under the heading

> "3. FAILURE OF EL PASO'S PLAN OF DIVESTITURE TO ALLOCATE SUFFICIENT GAS RESERVES TO NEW COMPANY ADVERSELY AFFECTS CASCADE AND THE PUBLIC'S INTEREST IN SERVICE."

The fact that the Justice Department stipulated with El Paso to the entry of the decree of divestiture does not prevent this Court from scrutinizing the decree. As stated in *United States v. DuPont de Nemours & Company*, 366 U.S. 316, 325 (Note 6) (1961):

"• • • no stipulation by the Government could circumscribe this Court's power to see that its mandate is carried out."

Respectfully submitted,

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